

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Civil Miscellaneous Appeal No.912 of 2011

Y. Karthikeyan
S/o Yuvaraj

Appellant/Claimant

Vs

1. Ravichandran

2. M/s. The Oriental Insurance Co.Ltd

Motor Third Party Claim Cell,
NO.8, UIL Building, Esplanade,
Chennai-18.

Respondents / Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 16.02.2010 made in MCOP No.534 of 2006 on the file of Motor Accident Claims Tribunal, Additional District and Sessions Court, Fast Track Court No.III, Chennai

For Appellant : Mr.Varathakamaraj

For Respondents: Mr.S.Manohar for R2

: R1 - Ex parte

J U D G M E N T

Aggrieved over the award passed by the Claim Tribunal (Additional District and Sessions Judge, Fast Track Court No.III), Chennai in MCOP No. 534 of 2006, the appellant who is the claimant in the Tribunal, filed this appeal for enhancing the compensation. He filed a claim petition under Section 166 of Motor Vehicles Act claiming compensation of Rs.2,00,000/- for the injury sustained by him in the road accident occurred on 06.12.2005. The Claim Tribunal after elaborate enquiry, awarded the compensation of Rs.24,000/- under various heads. Aggrieved over the award passed by the Claim Tribunal, now the appellant / claimant is before this Court.

2) For the sake of convenience, hereinafter the parties are called as per their litigative status in the Claims Tribunal.

3) It is the case of injury. The case of the claimant is that on 06.12.2005, at about 9.15pm, when he was riding his Motorcycle bearing Reg.No. TN 07 U 7723 in SN Chetty Road, Opposite to Sarojini Petrol Bunk, Kasimedu, Chennai-13, another Motorcycle bearing Reg.No. TN 22 Y 9997 came from the opposite direction in a rash and negligent manner and hit against the claimant. According to him, the accident occurred only due to the negligence of the driver of Motorcycle came from the opposite side. At the time of the accident, the claimant is aged about 30 years and he was working as an Administrative Officer in ITOCHU Corporation, No.628, Anna Salai, Teynampet, Chennai -18 and he was earning Rs.10,000/- per month. It is stated that due to the injury suffered, the claimant is not able to attend his regular work and hence sought a sum of Rs. 2,00,000/- as compensation from the respondents, who are the owner and insurer of the said motorcycle.

4) On the other hand, opposing the claim of the claimant, the 2nd respondent / Insurance Company, by filing Counter, denied the accident itself. Further, he has stated that due to the rash and negligent driving of the claimant only, the accident occurred. The Claimant should have impleaded the owner and the insurer of the Motorcycle, in which he was travelled. The age, avocation and income of the claimant are all denied. The claim of the claimant is excessive one. Thus, the 2nd respondent sought for dismissal of the claim petition.

5) Before the Tribunal, the claimant examined himself as PW 1. The Doctor who issued the Disability Certificate to PW 1 was examined as PW 2. Further, the claimant marked 12 documents as Ex.P.1 to Ex.P.12. On the side of the respondents, neither oral nor documentary evidence was let in. The 1st respondent remained exparte. The Tribunal on the basis of available records found that the driver of the 1st respondent Motorcycle alone caused the accident and passed the award for a sum of Rs.24,000/- as compensation to the injured claimant Karthikeyan. Aggrieved over the said findings, he approached this Court for enhancement of compensation.

6) The learned counsel for the appellant would submit that the Doctor who issued the Disability Certificate to the PW 1 has stated in his evidence that the claimant is having 40% of permanent partial disability. Further, he specifically stated due to the accident, fibula bone of claimant was fractured. Apart from that, the petitioner took treatment in the Apollo Hospital, for which he spent huge money. But the claim tribunal without considering those aspects awarded a meager compensation

of Rs.24,000/-. He would further contend that the compensation awarded by the claim tribunal may be enhanced.

7) Per contra, the learned Counsel appearing for the 2nd respondent would contend that the trial Court correctly appreciated the evidence let in by the petitioner and came to the conclusion that Rs.24,000/- is an appropriate amount for compensating the injury sustained by the petitioner. Accordingly, he prayed to dismiss the appeal. He would further contend that the Tribunal failed to note that the assessment of Disability suffered by the petitioner is not properly proved.

8) Submissions made by the counsels appearing on either side are considered.

9) According to the claimant, at the time of accident, the Motorcycle, owned by the 1st respondent and insured with the 2nd respondent came in a rash and negligent manner and hit against him. In order to substantiate the said evidence, he exhibited the copy of the First Information Report, which was prepared for the alleged accident as Ex.P.1. Further, he produced the copy of Discharge Summary issued to him as Ex.P.3. The contents of the First Information Report clearly shows that the negligence of the 1st respondent alone is a reason for the accident. On the side of the respondents, no contra evidence was let in to disprove the claim of the petitioner. The 2nd respondent Insurance Company has not produced any investigation report to contradict the claim. As such, the findings of the Tribunal on the basis of PW 1's oral evidence and through the contents of Ex.P.1 First Information Report, the negligence of the 1st respondent alone caused the accident is just and proper and the said finding of the Tribunal needs no interference. Accordingly, the findings of the Tribunal regarding the negligence aspect is confirmed.

10) The claimant states that he was aged about 30 years at the time of accident. Further, he stated that he was working as an Administrative Officer and earned Rs.10,000/- per month. In the said circumstances, due to the accident, tibia bone of the claimant was fractured. According to the evidence of doctor, he fixed the Disability suffered by the petitioner as 40%. The Doctor further deposed that the petitioner finds difficulty in walking and doing his regular work. He specifically stated that the tibia bone broken into 3 pieces. The petitioner has stated that he was working as an Administrative Officer will find it difficult to attend his normal work. But, the Tribunal is not accepted the evidence of PW 2, for the reason that the working sheet is not enclosed along with the Disability Certificate. Further, Rs.15,000/- alone was awarded under the head of disability. In this circumstances, I am of the opinion that the

claim Tribunal considered the claim petition filed by the claimant without following the guidelines issued by the Central Government. The Doctors specifically stated as of now, the movements of the leg was reduced upto 30 degree. Further, it was suggested on the side of the 2nd respondent, that the disability of the claimant is 25%. Accordingly, I am of the considered view that the claimant suffered 25% of Disability.

11) Taking into consideration of the nature of the injury, it will be appropriate to award Rs.2,000/- per percentage of disability. Accordingly, Rs.50,000/- was awarded under the head of permanent partial disability.

$$25\% \times \text{Rs.}2000 = \text{Rs.}50,000/-$$

12) In otherwise, the Claim Tribunal did not allow any amount under the head of medical expenses. In this regard, on go through the evidence of PW 1, he produced the medical bills for Rs.4,765/- under Ex.P.3 and for Rs.2,791.40 under Ex.P.5. The claim Tribunal without considering the particulars available in the Discharge Summary, straightaway rejected the claim of the petitioner under the head of medical expenses. But this Court inclined to allow Rs.7,500/- under the head of medical expenses. Moreover, as per the Discharge Summary produced by the claimant, he was taking treatment in Apollo Hospital, Chennai. So considering the standard of the Hospital, in which the petitioner was treated, allowing the above said amount under the head of medical bills is just and proper. In the Claim Tribunal, no amount was awarded under the head of pain and sufferings. Now as per the contents of the Discharge Summary, he was taking treatment in the Apollo Hospital for a period of 4 days. So it is necessary to award Rs.20,000/- under the head of pain and sufferings. Further, considering the other circumstances, this Court inclined to allow Rs.5,000/- each towards transportation, extra nourishment and attender's charges and Rs.10,000/- towards loss of amenities. Accordingly, the appellant is entitled to the following enhanced compensation

SL.NO	PARTICULARS	Awarded by the Claim Tribunal	Awarded by this Court
		AMOUNT (IN.RS)	
1.	Towards permanent partial disability 25% at the rate of Rs.2000/-	-	50,000.00
2.	Towards Medical Expenses	8,000.00	7,500.00
3.	Towards pain and sufferings	5,000.00	20,000.00

SL.NO	PARTICULARS	Awarded by the Claim Tribunal	Awarded by this Court
		AMOUNT (IN.RS)	
4.	Towards Transportation	1,000.00	5,000.00
5.	Towards extra nourishment	2,000.00	5,000.00
6.	Towards attender's charges	-	5,000.00
7.	Towards loss of amenities	-	10,000.00
8.	Towards Sympathetic compensation	15,000.00	-
9.	Towards Loss of earning	3,000.00	-
Total		34,000.00	1,02,500.00

13) Hence, the compensation arrived by the Claim Tribunal is enhanced to the extent of Rs.1,02,500/- . The rate of interest awarded by the Claim Tribunal 9% per annum is altered to 7.5% per annum. The 2nd respondent Insurance Company is directed to deposit the entire award amount along with interest and costs after deducting the amount already deposited, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, after collecting the Court fee for the enhanced compensation, the Tribunal is directed to transfer the said amount to the Bank account of the appellant through RTGS/NEFT within a period of one week.

14) In the result, the Civil Miscellaneous appeal is disposed of. There shall be no order as to costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

The Additional District and Sessions Judge,
Motor Accidents Claims Tribunal/
Fast Track Court No.III, Chennai

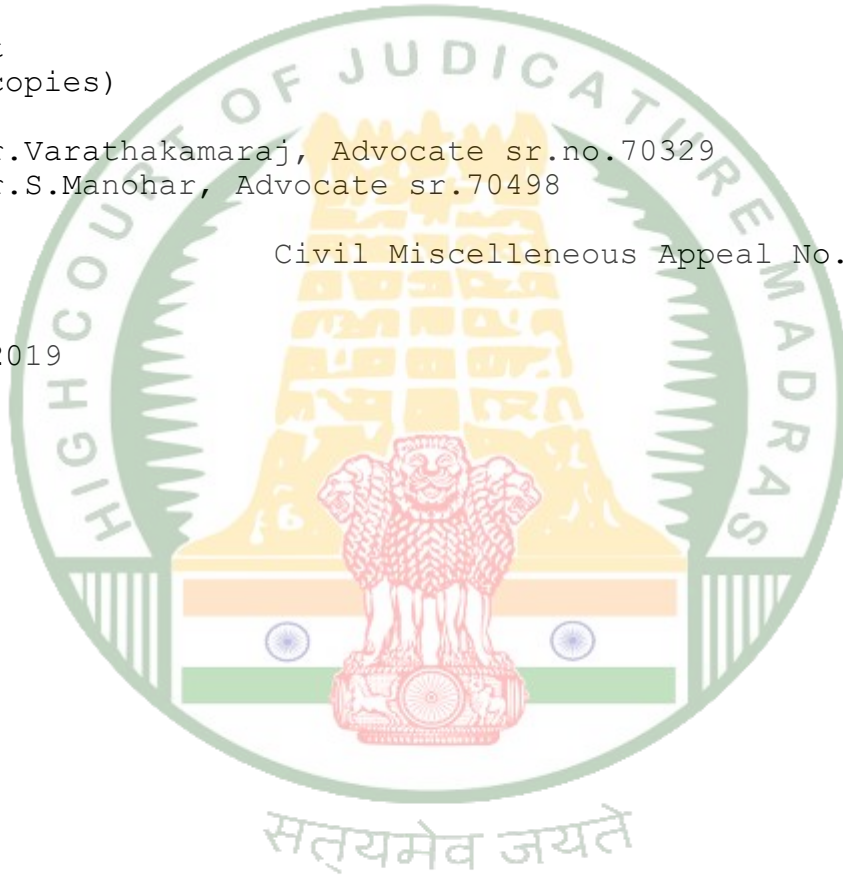
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High Court
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+1cc to Mr.Varathakamaraj, Advocate sr.no.70329
+1cc to Mr.S.Manohar, Advocate sr.70498

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